IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(*Special Original Jurisdiction*)

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FRIDAY, THE FOURTEENTH DAY OF OCTOBER

TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

* * *

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

* * *

–

WP.NO.22287 OF 2005

Between**:**

M/s. Ruchi Infrastructure Limited,

Represented by its Authorised Signatory,

Beach Road,

Kakinada, East Godavari District. … Petitioner

Versus

The Commercial Tax Officer,

Kakinada Circle, Kakinada,

East Godavari District … Respondent

Counsel for the Petitioner: Mr.P.SRINIVASA REDDY

Counsel for the Respondent: GOVT.PLEADER FOR COMMERCIAL TAX

O R D E R : { Per Sri Justice Elipe Dharma Rao }

This writ petition is filed seeking to issue a writ of certiorari to set aside the common assessment order dated 30-9-2005 passed in G.I.No.4344/2004-2005 by the Commercial Tax Officer, Kakinada Circle, East Godavari district, for the assessment years 2002-03 for net turnover Rs.3,13,40,673/- rate of tax @ 10% amounting to Rs.31,34,067/-; 2003-04 for net turn over Rs.3,37,12,995 rate of tax @ 10% amounting to Rs.33,71,299/-; 2004-05 for net turnover (upto Sept.2004)

2,64,20,285/- rate of tax @ 10% amounting to Rs.26,42,028/- i.e., total net turn over Rs.9,14,73,953/- rate of tax @ 10% amounting to Rs.91,47,394/- respectively, which is the assessed due tax is without jurisdiction, contrary to Rule 14-A (4) and (5) of Central Sales Tax (Andhra Pradesh) Rules and also to declare the restriction of time to pay the disputed tax to seven days without assigning any reasons muchless good and sufficient as contrary to Section 16 of APGST Act.

The learned counsel appearing for the petitioner seeks to contend that the impugned order is patently without jurisdiction, which suffers from violation of the provisions of the Act and the time for payment is illegally restricted to seven days without reasons, therefore, the petitioner is advised to question the order before this court. He submits that filing of an appeal involves payment of part of disputed demand as pre-deposit and the petitioner has to seek stay of collection of disputed tax. In that view of the mater, the petitioner need not suffer such onerous situation but for the inherent lack of jurisdiction of respondent to pass the impugned order.

He further seeks to contend that the petitioner is not contesting the impugned order on merits and factual aspects, which can be contested by the petitioner if and when the authority having proper jurisdiction passes an assessment order as per Rules and after due opportunity to the petitioner. Therefore, the present writ petition is filed on the limited scope that the respondent has no jurisdiction to pass the impugned order, which is in violation of the orders of Deputy Commissioner of Commercial Tax, Kakinada and specific Rules.

When the matter has come up for admission, the learned Govt.Pleader for

Commercial Tax submitted that as against the impugned assessment order, there is an effective alternate remedy of appeal under the statute. As such, there is no reason for the petitioner to approach this court to question the same in this proceeding.

On the other hand, the learned counsel for the petitioner submits that pursuant to the common assessment order, the demand notice is issued, restricting the time only for a period of seven days without recording any valid reasons, as such, the same is also in violation of the statutory provisions.

It is submitted by the learned counsel for the petitioner, the impugned demand notice was served on 07-10-2005 on the petitioner and he is entitled for 21 days time for payment of the same from 07-10-2005 without attracting any penal provisions.

Heard the learned counsel for the petitioner and the learned Govt.Pleader for Commercial Tax.

Considering the facts and circumstances of the case, without going into the merits of the case or otherwise, we deem it appropriate to permit the petitioner to avail the remedy of statutory appeal as contemplated under the statute. There is no special reason to entertain this writ petition bypassing appellate remedy available to the petitioner. However, we are of the view that no reasons have been recorded restricting of time for payment of demanded tax for a period of seven days. As-much-as it is stated that the proceedings are served on the petitioner on 07-10-2005, we direct the respondent not to insist for payment of the disputed tax as demanded under CST Demand Notice in Form NO.VII pursuant to the common assessment

order upto 28-10-2005. However, it is open for the petitioner to avail the remedy of appeal and obtain appropriate orders from the appellate authority.

Subject to the above direction, the writ petition is disposed of. No costs.

ELIPE DHARMA RAO , J.

OCTOBER 14th, 2005. ----------

I s L. *R .SUBHASH REDDY , J.*

* N.B. :

Communicate operative portion of the

Order by wire at party's costs.

B/o. I s L.